

Office of the Attorney General State of Texas

DAN MORALES
ATTORNEY GENERAL

November 26, 1996

Mr. Robb D. Catalano Assistant City Attorney Criminal and Police Division Office of the City Attorney Municipal Building Dallas, Texas 75201

OR96-2228

Dear Mr. Catalano:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 102212.

The City of Dallas (the "city") received a request for "all documents or control numbers regarding any investigation by the Dallas Police Department regarding former officers Ms. Forsythe and/or Mr. Kirks." You assert that the requested information is excepted from disclosure under section 552.103 of the Government Code. You have submitted the information at issue to this office for review.

Section 552.103(a) excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the governmental body must show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. Heard v. Houston Post Co., 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4.

You state that the former officers named in the request filed a civil suit against the city and the case is currently on appeal. You have not explained how the requested information relates to the pending litigation, but having reviewed the information, we find the relationship between the information and the pending litigation to be apparent. Thus, we conclude that section 552.103 excepts most of the information from disclosure.

It appears, however, that the opposing parties in litigation have had access to some of the information submitted to this office. Once all parties to litigation have gained access to information, through discovery or otherwise, section 552.103(a) is no longer applicable to that information. Open Records Decisions Nos. 551 (1990), 454 (1986). Therefore, any information to which the opposing parties in litigation have had access must be released to the requestor. The city may withhold the remaining information from disclosure pursuant to section 552.103.1

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours yery truly,

Karen E. Hattawav

Callaway Assistant Attorney General Open Records Division

KEH/ch

Ref: ID# 102212

Enclosures: Submitted documents

Mr. Richard E. Finlan cc: 1131 Clermont Avenue Dallas, Texas 75223

(w/o enclosures)

We note that once the pending litigation has concluded, section 552.103(a) is no longer applicable to the requested information. Open Records Decision No. 350 (1982). Of course, the city has discretion to release all or part of the information that is not otherwise confidential by law. See Gov't Code § 552.007.